

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to revise under Chapter 1, Article 6.5, of Title 15, Division 3 of the California Code of Regulations, provisions concerning recall of commitment. With the passage of Assembly Bill (AB) 1539 in October 2007, inmates who have been determined to be permanently medically incapacitated are now eligible for sentence recall consideration. The existing regulations pursuant to previous Penal Code (PC) Section 1170(e) recalls, only allow inmates who are terminally ill with a diagnosis of six months or less to live to be considered. Under Article 6.5, Intake, Release and Discharge of Inmates, existing Sections 3076 through 3076.3 are being reorganized and amended, and new Sections 3076.4 and 3076.5 are being adopted.

These regulations amend existing sections 3076 through 3076.3. Some of the existing language from Sections 3076 through 3076.3 has either been retained and amended, or for more appropriate placement and organization, relocated, amended, and incorporated into different sections that include newly adopted Sections 3076.4 and 3076.5. To help understand the reorganization of these sections, newly adopted and/or revised text follows all repealed text which is indicated by strikeout. This formatting should be clear in its intent and not be interpreted as wholesale repeal of the existing text since much of the existing language is retained or revised and relocated. The approach is intended to minimize reader difficulty in following and understanding extensive reorganization of textual material with numerous edits, deletions, and relocations.

The current regulations governing recall of commitment originated with the filing of emergency regulations in 1992. Regulations were adopted to implement, interpret, and make more specific provisions found in PC Sections 1170(d) and 1170(e). With the adoption of these emergency regulations, the Department established a standardized process for recall or resentencing to be applied uniformly to inmates incarcerated in California. Within these initial regulations, the Department set forth the criteria for recall consideration, and the four main components involved in the recall of a sentence. Section 3076 established the recall of commitment recommendation circumstances; Section 3076.1 established the recall of commitment consideration criteria; Section 3076.2 established recall of commitment administrative processing; and Section 3076.3 established victim notification requirements for recall of commitment recommendations submitted by the Department to the sentencing court.

The passage of AB 1539 expanded the provisions governing PC Section 1170(e) by including inmates determined to be permanently medically incapacitated as eligible for sentence recall consideration. Prior to the adoption of AB 1539 into law, only inmates who were diagnosed with six months or less to live were eligible for consideration. These proposed regulations provide details on how medical incapacitation shall be evaluated by Department physicians (i.e., the inmate requires 24-hour total and is unable to perform the activities of daily living, level of medical care the inmate requires, whether the medical incapacitation existed at the time the inmate was sentenced, etc.).

Emergency regulations for inmates released pursuant to PC Section 3550, Medical Parole are currently in effect. Similar to PC Section 1170(e), inmates released on Medical Parole must be permanently medically incapacitated with a medical condition that renders them unable to

perform activities of basic daily living, results in the need for 24-hour care, and the medical incapacitation must not have existed at the time of sentencing; however, there are important differences between the two programs. Unlike PC Section 1170(e), inmates diagnosed with a terminal illness resulting in a prognosis of six months or less to live are not eligible for PC Section 3550 consideration, i.e. Medical Parole. PC Section 3550 provides that the Board of Parole Hearings (BPH) shall grant Medical Parole if the conditions under which the inmate would be released would not reasonably pose a threat to public safety. Inmates released on Medical Parole continue to be supervised by CDCR parole, and may be removed from Medical Parole, if their medical condition improves or conditions of their release change posing a risk to the inmate, another person, or public safety. Under PC Section 1170(e) however, either the Secretary or BPH refers the inmate to the court for possible resentencing. If the court elects to release the inmate, it could recall the sentence entirely, place the inmate under parole supervision, or re-sentence the inmate to a shorter term resulting in his or her discharge from CDCR parole supervision under PC Section 3000. Because the bases for release, the process for the release, and the potential result of release under PC Section 1170(e) differs from release under PC Section 3550, CDCR requires regulations for Medical Parole separate from its regulations for release under PC Section 1170(e).

In order to assist in the process established by the proposed recall of commitment regulations and the passage of AB 1539, the Department created two forms, CDCR Form 3038, Notification to Inmate/Inmate Designee Recall and Re-Sentencing Procedure, and CDCR Form 3039, Waiver of Defendant's Personal Presence at the Recall and Re-Sentencing Hearing. CDCR Form 3038 serves to notify the inmate and his or her designee with specific information about the recall and resentencing process and the inmate's medical condition. This notification is required in PC Section 1170(e), as a result of AB 1539. CDCR Form 3039 serves as the inmate's waiver of the right to be present at the recall of commitment hearing, conducted by the sentencing court, as these eligible inmates are oftentimes unable to personally appear for hearings, due to their debilitated medical condition. The adoption of these new forms is necessary to carry out the processes established within these proposed regulations. These forms are included in this regulation package and copies are available for public review.

The Department has made an initial determination that no reasonable alternatives considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The Department must determine that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

Proposed Changes to the Text of Regulations.

Article 6.5. Intake, Release and Discharge of Inmates

3076. Recall of Commitment Recommendation Circumstances.

Existing paragraph under section 3076 is renumbered 3076(a) and is amended to change the word director to Secretary of CDCR, which reflects the current position title as a result of the 2005 Department reorganization, with the authority to recommend sentence recall. This authority is outlined, and as such, is mandated in the statute. For additional clarification, new text is added to exclude inmates who are sentenced to death from being considered for recall of commitment, pursuant to PC Section 1170(d).

Existing subsection 3076(a) is deleted and text is relocated in part to subsections 3076(b) and 3076(b)(1).

Existing subsection 3076(b) is renumbered new subsection 3076(a)(1) and text remains the same.

Existing subsections 3076(c) and 3076(d) are renumbered new subsections 3076(a)(2) and 3076(a)(3) and amended to change the word director to Secretary to accurately reflect the current position title, as a result of the 2005 Department reorganization, with the authority to recommend sentence recall. This authority is granted, and as such, is mandated in the statute.

New subsections 3076(b) through (b)(2) are adopted. This is necessary to establish in the regulations and make specific the statutory criteria for recall of commitment outlined in PC Section 1170(e). This is also necessary to provide staff with the criteria an inmate is required to meet prior to the commencement of the recall of commitment process outlined below. Institution staff who will be doing the initial work do not have ready access to the Penal Code so Department regulations must make clear what the eligibility criteria for recall of commitment are.

Subsection (b) again clarifies the authority of the Secretary or designee and acts to introduce the criteria described in subsections (b)(1) and (b)(2) below.

Subsection (b)(1). New text is necessary to establish the provisions of PC Section 1170(e)(2)(A) which provides that a physician employed by the Department will determine whether the inmate has a medical condition that will result in death in six months or less.

Subsection (b)(2). New text is necessary in part to clarify PC Section 1170(e)(2)(C). This language provides a general description of permanently medically incapacitated, and the factors by which a determination of eligibility is made by medical staff, pursuant to the statute. Included

in the criteria, the phrase “requiring 24-hour total care” is necessary to describe the level of care that an inmate eligible for recall of commitment is receiving and will continue to need in the community, if his or her sentence is recalled. This subsection also states the medical incapacitation must not have existed at the time of sentencing for the inmate to be eligible for consideration.

Also included are “activities of basic daily living” (ADL) which are defined in these regulations as “breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation,” and are the criteria that CDCR physicians will use to evaluate an inmate’s degree of incapacitation. For additional explanation, ADLs are activities related to a person’s ability to perform the physical actions of self maintenance and personal care. If a person has difficulty performing any of these activities independently, or cannot perform these activities without special equipment, they have a limitation in this activity.

ADL terminology and various assessment scales are widely used in the United States by medical staff to measure the ability of a person to function independently, and to evaluate the types of health care services that a person might need. Most models of health care delivery in the United States include ADL evaluation in the assessment of patients and the level of assistance an individual requires to support their basic daily needs. Most of the described ADLs are self-explanatory; however, two require additional explanation. “Transferring” as briefly described above, refers to a patient’s ability to move their body from place to place, such as from the bed to a wheelchair or from a wheelchair to the toilet seat. “Elimination” refers to an inmate’s ability to eliminate bodily waste from their body, which may include the patient’s ability to have regular bowel movements.

At the end of Section 3076, in the authority and reference citations, PC Section 1170(e) is added as a reference.

Section 3076.1 title is amended. For clarity, the word “Recommendation,” is added and the word “Criteria” is replaced with “Factors for Penal Code (PC) Section 1170(d).” This is necessary to ensure understanding that the factors presented in this section are considered for inmates found eligible for consideration under PC Section 1170(d). These factors do not exclude an inmate from recall consideration. They are included in the evaluation report described in subsection 3076.2(b)(2), and are used by the Secretary, BPH, and the sentencing court to assess any potential risk to public safety the inmate’s release may cause.

3076.1. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(d).

Section 3076.1 is amended to include punctuation changes, and for clarification, the word “recall” is added before “eligibility requirements.” Also as a result of renumbering, the reference to Section 3076 will now read, 3076(a). Lastly the word “before” has been replaced with “when” for more appropriate meaning.

To help clarify in this Initial Statement of Reasons who the C&PR is, the C&PR is defined in section 3000 of Title 15, and is the employee at the institution who serves as that institution’s

liaison with releasing boards and parole staff. The caseworker's role in the process is described in subsection 3076.2(b)(2).

Subsection 3076.1(a) is amended. Existing text, for better organization, is deleted and relocated to new subsection 3076(b)(1). The wording "the inmate's commitment offense" is added and has been relocated from subsection 3076.1(b). The language establishes the first factor to be considered, which is the inmate's commitment offense. This factor is necessary in order to assess any potential risk to public safety.

Subsection 3076.1(b) is amended. Existing text is deleted and relocated for more appropriate placement to subsections 3076.1(a) and 3076.1(d). New text is added to provide that the inmate's history of criminal affiliations shall be considered when determining recall of commitment recommendation. This is necessary because an inmate's involvement with disruptive groups, street gangs, prison gangs, terrorist groups, or racketeering enterprises is needed in order to perform an appropriate assessment of an inmate's suitability for recall consideration and any potential risk to public safety.

"Disruptive group" is defined in section 3000 of Title 15 as: Any gang other than a prison gang. "Gang" in general is defined in Section 3000 as well as "Prison Gang" and "Street Gang." Gang activity is addressed in Section 3023. Gang membership, affiliation, and behavior impact housing decisions, privilege groups, decisions regarding security housing and administrative segregation and in this case, may influence a court's decision regarding recall of a sentence and public safety. "Terrorist group" refers to organizations identified by the federal Department of Homeland Security and shared with law enforcement agencies throughout the country.

Subsection 3076.1(c) is amended. A non-substantive grammatical correction is made to the words "Departmental Review Board" by adding initial capitalizations.

Existing subsection 3076.1(d) is deleted and has been relocated in part to subsection 3076.3(d), which is the proper location for this factor under PC Section 1170(e) criteria. This factor is only considered in PC Section 1170(e) recalls requested because of an inmate's medical condition.

Existing subsection 3076.1(e) is renumbered subsection 3076.1(d) and is amended. For consistency throughout this section of the regulations, the word "whether" is added at the beginning of the first sentence. Also, the phrase "reflects a pattern of" is vague in meaning, and replaced with the word "includes" for a more succinct meaning. New text is added to further specify that offenses listed in PC Sections 667.5(c), 1192.7(c), and 290 will be considered when determining recall of commitment recommendation.

Existing subsection 3076.1(f) is deleted. This is necessary because the existing text has been relocated and incorporated in subsections 3076.1(d) and 3076.1(g).

Existing subsection 3076.1(g) is renumbered 3076.1(e) and is amended by adding the word "whether" at the beginning of the sentence for consistency throughout this section of the regulations, and adding the word "inmate's" before the word "commitment" for additional clarity.

Existing subsection 3076.1(h) is renumbered 3076.1(f) and is amended. The word “whether” is added at the beginning of the first sentence for consistency throughout this section of the regulations. The wording “an ongoing, serious pattern” has been replaced and will now read “a history of offenses involving.” This is necessary for a more appropriate and succinct meaning for staff.

Existing subsection 3076.1(i) is deleted and relocated to subsection 3076.3(h) because the proper location for this factor is under PC Section 1170(e).

New subsection 3076.1(g) is adopted. New text provides that any other criminal acts beside those provided in subsections 3076.1(b), 3076.1(d), and 3076.1(f) above, either prior to, or during the current period of incarceration, will be included in the factors to consider when determining a recall of commitment recommendation.

Section 3076.2 title is amended. For clarity, the text “for Penal Code Section 1170(d)” is added. This is necessary to ensure understanding that this Section only addresses recall of commitment process pursuant to PC Section 1170(d). The process for PC Section 1170(e) is found in Section 3076.4. Separation of the processes for referring the two types of commitment recalls is necessary for clarity and to minimize staff and reader confusion.

3076.2. Recall of Commitment Processing for Penal Code Section 1170(d).

Existing subsection 3076.2(a) is deleted. This is necessary because this Section speaks specifically about processing PC Section 1170(d) requests, which does not include terminally ill inmates. New Section 3076.4 of this Initial Statement of Reasons addresses the processing of PC Section 1170(e) eligible inmates that includes terminally ill, and is explained later.

Existing subsection 3076.2(a)(1) is renumbered 3076.2(a) and is amended. The words “a determination” is replaced with “consideration” for consistency throughout the regulations. Also, the text “that an inmate is terminally ill and that they be considered for recall of commitment” is deleted and is now addressed in Section 3076.4. The words, “the inmate’s” are added prior to the word “commitment” for clearer meaning. Text referencing the “inmate’s caseworker, who shall inform the inmate’s treating physician or the facility’s Chief Medical Officer of the request” is deleted and replaced with “classification and parole representative (C&PR).” This is necessary to reflect a change in the process as the C&PR, not the caseworker, is now responsible for receiving PC Section 1170(d) recall of commitment requests and ensuring the necessary steps in the process are followed and completed. As discussed above under section 3076.1, the C&PR is the employee at the institution who serves as that institution’s liaison with releasing boards and parole staff. The caseworker’s role in the process is described in subsection 3076.2(b)(2).

The text throughout this section references working days in which timelines are established to ensure the process is followed in a timely manner. These established timelines were determined by the Department to be the amount of time needed to accomplish each described task within the timeframes established in PC Section 1170(d).

Existing subsection 3076.2(a)(2) is renumbered 3076.2(b) and is amended. Existing text is deleted and relocated in part to subsection 3076.4(b). New text provides that the C&PR shall consider the factors listed in Section 3076.1, and review the inmate's Central File, as defined in Title 15, Section 3000, to ensure the inmate is not sentenced to death. This language is necessary to ensure that only those inmates who are potentially eligible under the enabling statute are considered for recall of commitment.

Existing subsection 3076.2(a)(3) is renumbered to 3076.2(b)(1) and is amended. Existing text is deleted and relocated in part to subsection 3076.4(b). New text provides that if the inmate is sentenced to death, the C&PR will document that the inmate is not statutorily eligible for recall of commitment on a CDC Form 128-B (Rev. 04/74). The C&PR shall ensure the original CDCR 128-B is filed in the inmate's Central File, and a copy is provided to the inmate. CDC Form 128-B is defined in Section 3000, and is an established form referenced frequently throughout the Title 15, Division 3 regulations. Text further directs that a formal, written, response to the recall of commitment request be provided to the sentencing court or Secretary with reasons for ineligibility. This is a necessary step in the process to advise the requesting party the inmate does not meet the eligibility criteria for recall of commitment, providing closure to the request.

Existing subsection 3076.2(a)(4) is renumbered new subsection 3076.2(b)(2) with additional subsections 3076.2(b)(2)(A) through (b)(2)(I) being adopted. Existing text from the first sentence is relocated in part to subsections 3076.2(a) and (c) for more appropriate placement and organization. In addition, new text provides that the C&PR will forward the recall of commitment request to the inmate's caseworker to complete an evaluation report. To help clarify, the inmate's caseworker is the correctional counselor assigned to gather, organize, analyze and record information necessary for the proper classification and parole planning for the inmate. The casework performed by the correctional counselor is used to properly assess the inmate's housing and educational/vocational assignments in the institution setting, based on the inmate's specific case factors. The caseworker is referenced frequently throughout the Title 15, Division 3, regulations.

The evaluation report outlines the inmate's case factors as listed in Section 3076.1, and will include the information outlined in subsections 3076.2(b)(2)(A) through (b)(2)(I). This provides the necessary background and official information/documents pertaining to the inmate's case factors used to assist the Secretary, BPH, and the sentencing court in assessing any potential risk the inmate's release may pose to public safety. The documents referenced in subsections 3076.2(b)(2)(D) through (b)(2)(I) must be attached to the evaluation report for review by the C&PR, Warden or Chief Deputy Warden, Secretary, and the Board of Parole Hearings. The text further directs that the caseworker complete and submit the evaluation report with the attachments within five working days. This language is necessary as a directive to staff to ensure that this process is followed and completed timely.

Most of the information listed is self explanatory, but additional explanation is provided for the following:

- **3076.2(b)(2)(A)4** is necessary because the inmate's entire criminal history (juvenile and adult) is relevant in determining an inmate's overall risk to public safety.
- **3076.2(b)(2)(A)5** is necessary to provide all pertinent information relative to the inmate's case factors. If other local or federal law enforcement agencies (including the Immigration and Customs Enforcement Agency) have an active or potential hold, warrant, or detainer against the inmate, and the inmate is granted recall of commitment by the sentencing court, appropriate notifications must be given to these agencies.
- **3076.2(b)(2)(B)** is necessary to ensure that proper victim notification information is obtained from the inmate's Central File. The information is incorporated in the evaluation report to ensure the Department complies with statutory requirements.
- **3076.2(b)(2)(F)** mentions the Institutional Staff Recommendations Summary (ISRS) as one of the elements included in the evaluation report for a referral for consideration for Recall of Commitment. The ISRS is a long established part of the department's Intake Process completed at its Reception Centers and is a required element for the inmate's case record, and is described in detail in Section 3075.1(h) of Title 15. The ISRS summarizes the inmate's history and status information on such topics as medical, mental health, or dental needs or limitations (if any), holds and detainers of other law enforcement or immigration agencies, work experience and skills, escape history, and substance abuse information. Such information is necessary to assess an inmate's health history and security risk if released into the community.
- **3076.2(b)(2)(I)** is necessary to provide the Secretary and sentencing court with pertinent information relative to the outcome of a life term of the inmate's most recent parole suitability hearing. It includes the length of the parole denial, how many parole suitability hearings the inmate has received, and the recommendations made by BPH to improve the inmate's suitability for release.

Existing subsection 3076.2(a)(5) is renumbered new subsection 3076.2(c) and is adopted. Existing text is deleted and relocated, in part, to subsection 3076.2(b)(1) for more appropriate placement. New text specifies that the C&PR will review the caseworker's evaluation report and forward it to the warden or chief deputy warden of the institution within three working days. It also removes language that implied the C&PR made a recommendation relative to recall consideration. This text is necessary to ensure the inmate's case is reviewed through the appropriate institutional custody level in a timely manner, and serves as a directive to staff.

Existing subsection 3076.2(a)(6) is renumbered 3076.2(d) and is amended. Existing text is deleted and relocated to subsections 3076.2(b)(2) through 3076.2(b)(2)(I), and is outlined in more detail. New text provides that the warden or chief deputy warden shall review and sign the evaluation report and forward it to the Classification Services Unit within three working days. This text is necessary to ensure the inmate's case is reviewed through the appropriate institutional custody level in a timely manner, and serves as a directive to staff.

Subsection 3076.2(a)(7) is renumbered new subsection 3076.2(e) and is adopted. Existing text is deleted and incorporated into parts of new Section 3076.4. New text provides that the evaluation report for PC Section 1170(d) recall shall be referred to the Secretary or designee for consideration. This text is necessary, pursuant to the statute, as the Secretary is responsible for

determining if an inmate should be recommended for recall of commitment to the sentencing court or BPH, based on the assessment of the case factors.

New subsections 3076.2(e)(1) through (e)(2) are adopted.

- **Subsection (e)(1)** provides the process to be followed in the event a positive recommendation for recall is made and the inmate is sentenced to a determinate term. The result is the Secretary or designee's recommendation shall be referred directly to the sentencing court as BPH need not review such cases. This is necessary as a directive to staff as a further step in the recall process.
- **Subsection (e)(2)** provides the process to be followed in the event a positive recommendation for recall is made and the inmate is sentenced to an indeterminate term. The result is the Secretary or designee's recommendation shall be referred to the Board of Parole Hearings for review and consideration. This is necessary as a directive to staff as a further step in the recall process.

New subsection 3076.2(f) is adopted. Pursuant to PC Section 1170(d), the court may on its own motion recall the sentence and commitment previously ordered within 120 days of the inmate's sentencing. When this occurs, the court may request a post-sentence report. For clarification, a post-sentence report is the evaluation report outlined in subsection 3076.2(b)(2), which is completed by the inmate's caseworker. The caseworker shall forward the report to the C&PR within five working days. This text is necessary to ensure the inmate's case is reviewed through the appropriate institutional custody level in a timely manner, and serves as a directive to staff. This text is also necessary as a directive to staff and to provide a timeframe for prompt processing.

New subsection 3076.2(f)(1) is adopted. New text provides that the C&PR shall have three working days to review the evaluation report and forward it to the warden or chief deputy warden for review. This text is necessary to ensure the inmate's case is reviewed through the appropriate institutional custody level in a timely manner, and serves as a directive to staff. This text is also necessary as a directive to staff and to provide a timeframe for prompt processing.

New subsection 3076.2(f)(2) is adopted. New text provides the process upon the warden or chief deputy warden's review and signature of the evaluation report. It is submitted directly to the sentencing court within three working days. This text is necessary as a directive to staff and to provide a timeframe for prompt processing.

Existing subsections 3076.2(b) through 3076.2(b)(5) are deleted and relocated in part to Section 3076.1 and subsections 3076.2(b) through (b)(2) for more appropriate placement and organization within the text. These subsections described the process for recall of commitment consideration of terminally ill inmates. This change is necessary because significant reorganization of this section was needed in order to incorporate the new recall of commitment provisions established by new PC Section 1170(e), and the deleted text is adopted, in part where appropriate, within this section.

Existing section 3076.3 is relocated and renumbered new section 3076.5

New section 3076.3 title and text are adopted.

3076.3. Recall of Commitment Recommendation Consideration Factors for Penal Code Section 1170(e).

This section shall provide the eligibility factors pursuant to PC Section 1170(e) consideration. PC Section 1170(e) provides that “if the Secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2) [of PC Section 1170], the secretary or the board may recommend to the court that the prisoner's sentence be recalled.” The sentencing court may choose to recall or resentence an inmate if the court finds that a physician employed by CDCR has diagnosed the inmate with a terminal illness resulting in a life expectancy of six months or less, or has determined the inmate is permanently medically incapacitated with a condition that renders him or her permanently unable to perform activities of basic daily living. This section is necessary to differentiate between the two types of PC Section 1170 recall of commitment requirements.

Section 3076.3 initial paragraph language is necessary to act as an introduction for the subsequent subsections (a) through (j), which are factors considered for inmates who are found otherwise eligible for PC Section 1170(e) recalls. These factors do not exclude an inmate from recall consideration. They are included in the evaluation report described in subsection 3076.4(e), and are used by the Secretary, BPH, and the sentencing court to assess any potential risk to public safety the inmate's release may cause.

Under section 3076.3 new subsections (a) through (j) are adopted.

The factors provided in subsections (a) through (j), will match the factors provided in Section 3076.1 for consistency with the exception of three new factors which are relevant to PC Section 1170(e) requests only. Each of these subsections is explained below. To avoid redundancy, a referral is made back, where appropriate, to the explanations provided for Section 3076.1 of this ISOR.

Subsection 3076.3(a) matches the factor in 3076.1(a). See explanation on page 4.

Subsection 3076.3(b) matches the factor in 3076.1(b). See explanation on page 5.

Subsection 3076.3(c) matches the factor in 3076.1(c). See explanation on page 5.

Subsection 3076.3(d) relocates existing text from deleted section 3076.1(d) for proper placement under the factors provided in this section pursuant to the provisions of PC 1170(e).

Subsection 3076.3(e) matches the factor in 3076.1(d). See explanation on page 5.

Subsection 3076.3(f) matches the factor in 3076.1(e). See explanation on page 5.

Subsection 3076.3(g) matches the factor in 3076.1(f). See explanation on page 5.

Subsection 3076.3(h) is a new factor in Title 15 pursuant to consideration for requests under PC Section 1170(e), and is formed in part by relocated text from deleted subsection 3076.1(i). This text is necessary in order to incorporate the new provisions established under AB 1539 for PC Section 1170(e), specifically that a recommendation for recall shall include a “post release plan.” Among the elements needed in such a plan is verification that the requisite medical and mental health resources are available to the inmate if their sentence is relocated outside the institution where their care has been provided so far. Also as a result of the extensive section reorganization, reference to terminally ill inmates is removed from the original relocated text and now appears in this section for better placement.

Subsection 3076.3(i) matches the factor in 3076.1(g). See explanation on page 5.

Subsection 3076.3(j) is a new factor which provides that an inmate’s capacity to commit or to influence others to commit criminal acts that endanger public safety will be evaluated prior to recommendation for recall. This factor is relevant to whether the inmate could be a threat to public safety if released from State prison.

At the end of Section 3076.4 in the authority and reference citations, PC Section 5058, 1170(e), 3043 and 3058 and *Martinez v. Board of Parole Hearings* (2010) 183 Cal.App.4th 578 are added as a reference.

New section 3076.4 through subsection 3076.4(j) are adopted.

3076.4. Recall of Commitment Processing for Penal Code Section 1170(e).

New text in this section is presented in an organized step-by-step format that provides the process by which inmates, who are diagnosed as terminally ill with a six month or less life expectancy and/or determined to be permanently medically incapacitated, shall be processed for recall of commitment. This language is necessary in order to make specific the general provisions of PC Section 1170(e), and to establish a standardized departmental process for staff to follow. This process also helps to ensure that only potentially eligible inmates are processed. Some of the language in this section incorporates in part and amends some of the deleted language from existing Section 3076.2 that speaks to processing inmates that have been diagnosed as terminally ill or determined to be permanently medically incapacitated, where applicable, to more accurately reflect the recall of commitment process. This text also references working days and/or hours to ensure the process is followed in a timely manner. These established timelines were determined by the Department to be the amount of time needed to accomplish each described task within the timeframes provided in PC Section 1170(d).

The first paragraph is necessary to establish in the regulations the persons who may initiate a request for recall of commitment on behalf of an eligible inmate, pursuant to PC Sections 1170(e)(4) and (e)(6). This clarifies that an inmate’s consideration is not solely initiated on a referral by the inmate’s departmental primary care physician, but may also be initiated at the request of other parties identified in the statute. Additional text also outlines that, pursuant to

PC Section 1170(e)(6), the person or persons the inmate or his or her family member or designee may contact to independently request consideration for recall. These are the Chief Medical Officer (CMO) or Chief Medical Executive (CME) or Secretary. For purposes of this Initial Statement of Reasons, the CMO and CME are the institution's highest ranking medical staff members with the authority to make medical decisions.

Subsection 3076.4(a) is necessary to establish in the regulations how a physician shall initiate the recall of commitment process under this Section. The CDC Form 128-C is referenced in existing text, and remains the form utilized to initiate the recall of commitment process under this section. This text is also necessary as a step in the process and serves as a directive to staff on the specific medical eligibility information that must be included on the CDC 128-C in order to process the recall of commitment request.

Subsection 3076.4(b) is necessary as a directive to staff and establishes the next step in the process in the regulations. The CMO or CME, the Deputy Medical Executive, and the Statewide, Chief Medical Executive must concur with the treating physician's prognosis, in order for the request to be submitted to the C&PR at the institution where the inmate is housed. The Deputy Medical Executive and the Statewide, Chief Medical Executive, respectively, are the next levels of authority in the reporting structure for the Office of the Receiver, and their approval is required to ensure the inmate meets the medical eligibility criteria for PC Section 1170(e) recall of commitment requests.

Subsection 3076.4(b)(1) is necessary as a directive to staff. This text clarifies that if the CMO or CME, or the Deputy Medical Executive, or the Statewide, Chief Medical Executive do not concur with the treating physician's prognosis, and determine the inmate does not meet the medical eligibility criteria pursuant to PC Section 1170(e), the recall of commitment request is stopped.

Subsection 3076.4(c) specifies that the C&PR will review the CDC Form 128-C and the inmate's Central File, in order to determine whether the statutory provisions as explained in subsections (c)(1) and (c)(2) below are met. This language is necessary to ensure that only eligible inmates are considered for recall of commitment under the provisions of this section and the statute.

Subsection 3076.4(c)(1) provides if the inmate is ineligible for consideration because they are sentenced to death or to life without the possibility of parole, the C&PR will document the reason for ineligibility on a CDC Form 128-B, and file the original in the inmate's Central File. The C&PR must also provide a copy of the CDC 128-B to the inmate and the inmate's physician as notification that the recall of commitment request was stopped due to statutory ineligibility. This language is necessary as a directive to staff and appropriate notice to the inmate.

Subsection 3076.4(c)(2) provides that if the inmate is not sentenced to death or to life without the possibility of parole, the C&PR shall notify the CMO or CME that the inmate is eligible for recall of commitment consideration. This language is necessary as a directive to staff. New text also provides that medical staff shall explain the recall of commitment process is to the inmate within 48 hours of notification from the C&PR that the inmate is eligible for recall of

commitment consideration, and shall arrange for the inmate to designate a family member or other outside agent on CDCR Form 7385 (Rev. 9/09), Authorization for Release of Information, which is incorporated by reference. This subsection specifies that the inmate's designee shall be informed about the recall of commitment process and the inmate's medical condition, pursuant to PC Section 1170(e)(4). It also states that if the inmate is mentally unfit to designate a family member or other outside agent, medical staff shall contact the inmate's emergency contact listed on the CDC Form 127 (Rev. 6/01), Notification in Case of Death or Serious Injury, or Serious Illness, which is incorporated by reference, and advise them of the recall process. This step of the process is necessary as a directive to staff, in order to comply with statute.

- CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information. This is a current, approved form which is necessary to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, which protects information relative to an individual's past, present, or future physical or mental health or condition, the provision of health care to the individual, and past, present, or future payment for the provision of health care to the individual. Since PC Section 1170(e)(4) mandates the inmate must designate a family member or outside agent to receive information about his or her medical condition and prognosis, the Department is required to obtain written authorization from the inmate allowing for the release of the information.
- CDC Form 127 (Rev. 06/01), Notification in Case of Death, Serious Injury, or Serious Illness. This is a current, approved form which is also utilized to comply with the requirements of PC Section 1170(e)(4), wherein if an inmate is deemed mentally unfit to designate a family member or outside agent to receive information about his or her medical condition and prognosis, as well as the recall and resentencing procedure, the Department shall contact the inmate's emergency contact. This form is completed by the inmate, on an annual basis, with information pertaining to his or her emergency contact, and is filed in the inmate's Central File.

CDCR Form 7385, Authorization for Release of Information is referenced in the text, and is incorporated by reference into the regulations, and copies have been made available for public review.

CDC Form 127, Notification in Case of Death or Serious Injury, or Serious Illness was last revised on 6/01 and is adopted into Title 15 with these regulations, and replaces older revisions of this form that are now currently mentioned in the Title.

Subsection 3076.4(d). New text provides that the C&PR shall submit the CDC Form 128-C to the inmate's caseworker to complete an evaluation report that shall include the following information and attachments as described below in subsections 3076.4(d)(1) through (d)(13). This information and attachments are similar to those described in subsections 3076.2(b)(2) through (b)(2)(I) with some exceptions that are relevant to this section text, as described below.

The inmate's caseworker will prepare the evaluation report. An evaluation report includes the inmate's case factors as listed in section 3076.3, and also includes the information and documentation listed in subsections 3076.4(d)(1) – (d)(13).

Most of the information is self explanatory, but for additional explanation the following is provided:

- **3076.4(d)(2)(D)** is necessary because the inmate's entire criminal history (juvenile and adult) is relevant in determining an inmate's overall risk to public safety.
- **3076.4(d)(2)(E)** is necessary to provide all pertinent information relative to the inmate's case factors. If other local or federal law enforcement agencies (including the Immigration and Customs Enforcement Agency) have an active or potential hold, warrant, or detainer against the inmate, and the inmate is granted recall of commitment by the sentencing court, appropriate notifications must be given to these agencies.
- **3076.4(d)(3)** is necessary to ensure that proper victim notification information is obtained from the inmate's Central File. The information is incorporated in the evaluation report to ensure the Department complies with statutory requirements.
- **3076.4(d)(6)** includes the CDCR Form 3038 (12/10), Notification to Inmate/Inmate Designee – Recall and Re-sentencing Hearing, which is incorporated by reference into the regulations and a copy has been made available for public review. This form is necessary because it serves to notify the inmate and his or her designee with specific information about the recall and resentencing process and the inmate's medical condition. This notification is required in PC Section 1170(e), as a result of AB 1539.
- **3076.4(d)(7)** includes the CDCR Form 3039 (12/10), Waiver of Defendant's Personal Presence at the Recall and Resentencing Hearing, which is incorporated by reference into the regulations and a copy has been made available for public review. This form serves as the inmate's waiver of the right to be present at the recall of commitment hearing, conducted by the sentencing court, as these eligible inmates are oftentimes unable to personally appear for hearings due to their debilitated medical condition.
- **3076.4(d)(13)** is necessary to provide the Secretary and sentencing court with pertinent information relative to the outcome of a life term of the inmate's most recent parole suitability hearing. It includes the length of the parole denial, how many parole suitability hearings the inmate has received, and the recommendations made by BPH to improve the inmate's suitability for release.

Subsection 3076.4(e). New language specifies that the C&PR will review the caseworker's evaluation report and forward it to the warden or chief deputy warden of the institution within three working days. This text is necessary to ensure the inmate's case is reviewed through the appropriate institutional custody level in a timely manner, and serves as a directive to staff.

Subsection 3076.4(f). New text provides that the warden or chief deputy warden shall review and sign the evaluation report and forward to CDCR headquarters within three working days. This text is necessary to ensure the inmate's case is reviewed through the appropriate institutional custody level in a timely manner, and serves as a directive to staff.

Subsection 3076.4(g). New text provides that the evaluation report for PC Section 1170(e) recall shall be referred to the Secretary or designee for consideration. This text is necessary, pursuant to the statute, as the Secretary is responsible for determining if an inmate should be recommended for recall of commitment, based on the assessment of the case factors, to the sentencing court or BPH.

Subsections 3076.4(g)(1) through (g)(2) are adopted.

- **Subsection (g)(1)** provides the process to be followed in the event a positive recommendation for recall is made and the inmate is sentenced to a determinate term. The result is the Secretary or designee's recommendation shall be referred directly to the sentencing court and shall include one or more medical evaluations, the findings of which must demonstrate the inmate meets the criteria set forth in PC Section 1170(e)(7) and a post-release plan. The medical evaluation refers to the CDC 128-C authored by the inmate's treating physician described in section 3076.4(a) above, which is required to be sent to the sentencing court with the Department's recommendation for recall. It provides the basis for the inmate's medical eligibility for recall (i.e., medical diagnosis, prognosis, functional status, etc.). The post-release plan is the information gathered by the Department relative to where the inmate would reside if he or she is granted recall of commitment. It is imperative the sentencing court is provided with all relevant information concerning the inmate's plans upon release in order to assist the court with assessing the inmate's suitability for recall of commitment. This language is also necessary as a directive to staff, in order to clarify that the Department maintains recall authority for inmates sentenced to a determinate terms (non-lifers).
- **Subsection (g)(2)** provides the process to be followed if the inmate is sentenced to a indeterminate term. The Secretary or Designee's recommendation, whether positive or negative, shall be referred to the Board of Parole Hearings for review and consideration. This language is necessary as a directive to staff, in order to clarify that the Board of Parole Hearings maintains recall authority for inmates sentenced to indeterminate terms (lifers).

Subsection 3076.4(h) provides the process if the sentencing court grants the recall and resentencing application. This language is also necessary as a directive to staff. The text provides that the inmate shall be released within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate or ordered by the court. The 48-hour release requirement is in compliance with PC Section 1170(e)(9). Text also provides that if the inmate has agreed to waive the 48 hour release requirement, the Department shall request the inmate be released within 30 calendar days. The additional time may be necessary to allow sufficient time for the coordination of the inmate's housing and medical needs in the community.

Subsection 3076.4(i). As a directive to staff, new text provides the process if the Division of Adult Parole Operations (DAPO) is coordinating the inmate's placement within the community. This subsection directs that the C&PR shall provide a copy of the release order to DAPO upon receipt from the sentencing court.

Subsection 3076.4(j) specifies the items, and makes specific the provisions of PC Section 1170(e)(9), that the inmate shall have in their possession at the time of release. This is necessary as a directive to staff and clarifies the requirements in the statute.

Existing section 3076.3 has been relocated and renumbered 3076.5 and is amended.

3076.5. Victim Notification for Recall of Commitment Recommendations.

For clarification, the text “by Department headquarters or the Board of Parole Hearings” is added to the first sentence for clearer meaning. Also, in the first sentence the word “sentencing” is added before “court” to clarify the reference. The words “if the victim has died” are deleted because a victim’s next of kin may also be noticed if they have filed the required request with the Department, even if the victim is still alive (i.e., parent of minor child, spouse of victim, etc.). Other changes include adding the word “formally” to the reference of requested notice. Also in the same sentence, after the wording “requested notice” new text adds “about the status of the inmate in prison, including, but not limited to, notification of release, escape, or death, or.” This new language is necessary because the victim or victim’s next of kin must have previously submitted required documentation to the Department to be noticed of any change of the inmate’s status. New text is added and reads: “in writing; either by submitting a signed letter or a completed CDCR Form 1707 (Rev. 04/08), Request for Victim Services, which is incorporated by reference, to the Office of Victim and Survivor Rights and Services. This language is necessary to specify what steps a person must take in order to formally request notice. The words “release or” are added before the words “parole suitability” for better accuracy in the regulations according to statute as some inmates may in fact be released into the community. The reference to Board of Prison Terms is updated with the current title of Board of Parole Hearings. The 2005 Department reorganization (SB 737) made this change in the Board’s name. Other minor revisions are made for grammatical correctness and clarity.

At the end of Section 3076.5 in the authority and reference citations, PC Section 1170(e) is added as a reference.